

**SUBJECT:** Providing for pre-suit inspection and correction in construction suits

**COMMITTEE:** Business and Industry — committee substitute recommended

**VOTE:** 7 ayes — Oliveira, Shine, Collier, Romero, Stickland, Villalba, Workman  
0 nays

**WITNESSES:** For — Curt Martin, Texas Building Branch AGC; Aaron Sacchieri, TEXO AGC/ABC; (*Registered, but did not testify*: Peyton McKnight, American Council of Engineering Companies of Texas; Adam Burklund, American Insurance Association; Jon Fisher, Associated Builders and Contractors of Texas; Alicia Dover, Associated Plumbing-Heating-Cooling Contractors of Texas; Phil Thoden, Austin AGC; Jerry Bratton, Bratton Steel; Wendy Lambert, Central Texas Subcontractors Association; Chris Elsberry and Ryan Windham, Cummings Electrical, LP; Perry Vaughn, Rio Grande Valley AGC; Michael Chatron, Texas Building Branch AGC; Lee Parsley, Texans for Lawsuit Reform; Ned Munoz, Texas Association of Builders; Jason Kennedy and Michael White, Texas Construction Association; David Lancaster, Texas Society of Architects; Perry Fowler, Texas Water Infrastructure Network; Will Hodges, TEXO; Jack Baxley, TEXO AGC/ABC; Tara Snowden, Zachry Corporation; Ken Boen; Todd Hewitt; Jim Sewell)

Against — Barry Haenisch, Texas Association of Community Schools; John (Lin) McCraw, Texas Trial Lawyers Association; (*Registered, but did not testify*: Claudia Russell, El Paso County; Donna Warndorf, Harris County Commissioners Court; John Dahill, Texas Conference of Urban Counties; Shanna Igo, Texas Municipal League; Michael Lamb, Texas Rural Education Association)

**DIGEST:** CSHB 2343 would require claimants who intended to bring action in a judicial proceeding for damage or loss to commercial personal property allegedly caused by a construction defect to first obtain an inspection and written report from an independent, licensed professional engineer. The report would have to:

- identify the specific construction defect on which the claim was based;
- describe the present physical condition of the affected improvement; and
- describe any modification, maintenance or repairs made by the claimant or others.

The bill would require the claimant to provide written notice of the inspection to each party subject to the claim at least 10 days before the inspection. This notice would have to identify the engineer conducting the inspection, list each specific area to be inspected, and include the date and time of the inspection. All parties subject to the claim would be permitted to attend the inspection.

CSHB 2343 also would require the claimant to allow the defendant at least 150 days after being provided the engineer's report to inspect and correct any construction defects identified in the report.

Construction defects covered by the bill would include certain deficiencies in design, specifications, surveying, planning, or supervision made during initial construction of an improvement, construction of an addition, or repair and remodeling. Construction defects would have to be the result of defective materials, a violation of a building code, a failure to meet professional standards, or failure to meet accepted trade standards for good and workmanlike construction.

If the notice of inspection was provided during the final year of the limitations period applicable to the claim, the limitations period would be extended until one year after the notice was given.

The bill also would allow a court, arbitrator, or other adjudicating authority to dismiss an action asserting a construction defect if the claimant did not provide the required inspection and opportunity for correction. These authorities also could abate the action for up to year if the person bringing the action showed an intention to comply with the

required inspection and opportunity for correction.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2017, and would apply only to a cause of action accruing on or after that date.

**SUPPORTERS  
SAY:**

CSHB 2343 would provide a clear and fair standard for notifying construction professionals of defects. Currently, contractors are increasingly being sued for construction defects without being given notice or the opportunity for repair. If notified, these contractors could more efficiently fix problems without the hassle of a lawsuit, and should therefore be entitled to pre-suit notice.

The bill would not overly burden claimants. Inspection by a third-party engineer is necessary to ensure neutrality in the report, and the 150-day window for the defending contractor to make corrections would not prohibit claimants from seeking out alternative repairs.

**OPPONENTS  
SAY:**

CSHB 2343 would significantly burden claimants in construction defect damage proceedings. Requiring inspection by a third-party engineer is unnecessary to identify the defect in most cases and would be especially inconvenient for municipalities that already retain licensed investigators on staff. Additionally, 150 days after the report is too long to wait for crucial construction fixes and might even pose a safety hazard in some cases.